

**LETTER OPINION
2003-L-57**

December 1, 2003

Mr. Ron Weikum
Grant County State's Attorney
PO Box 196
Carson, ND 58529-0196

Dear Mr. Weikum:

Thank you for your letter asking whether the Grant County Commission may declare a local emergency, ban open fires in the county, and find a person in willful violation of this ban guilty of an infraction. It is my opinion that the Grant County Commission, as part of its emergency management plan under N.D.C.C. ch. 37-17.1, may declare a local emergency and ban open fires; however, N.D.C.C. § 37-17.1-05 does not provide Grant County with the authority to impose an infraction for violating a ban.

Local governments, including counties, have authority to declare an emergency under the Disaster Act. N.D.C.C. § 37-17.1-10. The North Dakota Disaster Act allows local governments, including counties, to ban open burning as an appropriate measure included within a local disaster or emergency operational plan under N.D.C.C. § 37-17.1-07 and implemented through a declaration of a local disaster or emergency under N.D.C.C. § 37-17.1-10. Once the local disaster or emergency operational plan is in effect, it may be activated by the principal executive officer of a county or city, who may declare a local emergency for a period of up to seven days; emergencies in excess of seven days must receive consent from the governing board of the county or city. N.D.C.C. § 37-17.1-10. The effect of a declaration of a local disaster or emergency is to "activate the response and recovery aspects of any and all applicable local disaster or emergency operational plans and to authorize the furnishing of aid and assistance thereunder." N.D.C.C. § 37-17.1-10(2).

In your letter, you question whether N.D.C.C. § 37-17.1-05 provides the county with the authority to impose a criminal punishment. This section states, in relevant part, "[a]ny person who willfully violates any provision of an executive order or proclamation issued by the governor pursuant to this chapter is guilty of an infraction." N.D.C.C. § 37-17.1-05(7). As such, the section provides for a penalty to those who violate the

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order or proclamation *issued by the governor*, but does not provide the same penalty for orders issued by counties or cities. Consequently, N.D.C.C. § 37-17.1-05 does not provide Grant County with authority to impose a penalty for violating a ban on open fires.

Sincerely,

Wayne Stenehjem
Attorney General

njl/vkk